IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8512 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SANTARAM SPINNERS LTD.
Versus
UPEN P PAREKH AND OTHERS

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Appearance :
MR HARIN P RAVAL for the Petitioner
MS MEGHA JANI for Respondent No.1.

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 14/09/2005

ORAL JUDGMENT

1. The plaintiff – original defendant No.1 is before this Court being aggrieved of an order dated 16.03.2001 passed by the learned Judge, Court No.14 below Exh.8 in Civil Suit No.5788 of 1996, whereby the learned Judge was pleased to allow application Exh.8 seeking permission to institute the suit and sue the defendant for and on behalf of and for the benefit of the persons interested who have made applications in the public issue of the defendant company and who have been allotted the shares.

2. Earlier this vary petitioner had filed Civil Revision Application No.660 of 2001 before this Court. The same was disposed of by this Court (Coram: D.P.Buch, J.) by his judgment and order dated 9th August 2002, wherein it was held that:

> "In above view of the matter, it is found that the order impugned in this Revision

Application is not revisable and, therefore, the Civil Revision Application deserves to be dismissed.

For the foregoing reasons, this Revision Application is dismissed. No order to costs.

At this stage, learned advocate for the petitioner states that the petitioner may be at liberty to file appropriate petition under Article-227 of the Constitution of India, for that no permission is necessary. However, it may be open to the petitioner to file appropriate petition before the Court if the petitioner is otherwise entitled to do so."

3. It is thereafter that the present petition is filed under Articles 226 and 227 of the Constitution of India.

4. It is the case of the original plaintiff – respondent No.1 herein that the defendant No.1 company has committed fraud in a **"Public Issue"** and also while refunding the money to two non-allottees. It is also the case of the plaintiff that there are numerous identical persons as that

of the plaintiff who have interest in this suit over and above the plaintiff.

5. The learned Judge after taking into consideration the rival submissions, the provisions of Order 1, Rule 8 of the Code of Civil Procedure and the judgment relied on by the learned advocate for the petitioner of the Bombay High Court in the matter of **Mansukhlal Dhanji Vora and Others Vs. The Jupiter Airways Ltd. and Others**, reported in AIR 1953 Bombay 112, has come to the conclusion that there are features which differentiate the present case from the case before the Bombay High Court.

The learned Judge in the considered opinion of this Court has rightly held that:

> “In the present case, there is a public issue. There is allegation of fraud in allotment of the shares as well as refund of money on the un-allotment of the shares. Checking he relief of the suit, it transpires that it is for declaration of several minutes

of the company as illegal, being fabricated, altered and tampered with and for declaration that the public share of the defendant – company for 35 lacs equity shares of Rs.10/- each at a premium of Rs.10/- per share, aggregating to Rs.700/- lacs is fraudulent, illegal, invalid and viod; with ancillary relief regarding issuance of bonus shares, dividend, transfer or the shares, etc. Thus, it is certain that in addition to the plaintiff, there must be numerous persons of public that might be interested in the present litigation."

6. Learned advocate appearing for the petitioner streneously submitted that the aforesaid observation of the learned Judge that "there might be numerous persons of public that might be interested", is not based on facts and is a mere conjecture and surmise. The submission of the learned advocate for the petitioner can not be accepted by this Court because even the other learned Judge, who was dealing with the Notice of Motion for injunction in the same suit has

recorded a categorical finding that the plaintiff has proved that there are mis-statements in 'Prospectus'. However, the learned Judge did not grant any interim relief on the ground that the grant of interim relief as prayed for cannot be granted. Thus, it is on record, on appreciation of evidence/record placed before the learned Judge that there were mis-statements/incorrect statements in the 'Prospectus' relying on which the public at large subscribes the public issue of the company. So to contend that the learned Judge has erred in observing that, “in addition to the plaintiff, there must be numerous persons of public that might be interested in the present litigation”, is not only misplaced, but is also misconceived. Once it is recorded by the learned Judge that there were mis-statements in the Prospectus, the aforesaid conclusion is the only conclusion which can be drawn and the learned Judge has rightly done that.

7. Mr.Raval, the learned advocate appearing for the petitioner submitted that order 1, Rule 8 of the Code of Civil Procedure is amended by Gujarat State, but then he did not substantiate the same. He submitted that for a suit of this nature required condition is that there should be more than one plaintiff. Mr.Raval did not point out the relevant provision of law. Hence, submission is rejected.

8. Learned advocate appearing for the respondent – original plaintiff submitted that the judgment of the Bombay High Court was in different sets of facts. In support of this she invited attention of the Court to the observations made by the learned Judge in this regard:

> “In view of the above settled principle of law, on perusal of the citation referred to by the defendant, it is clear that in the cited case, the fact was different than that in the present case inasmuch as in the said case, the shares were allotted as private

placement and not by public issue; therefore, the Bombay High Court, in its judgment cited above, has held that the relation between the company and the share holders was of a contractual relationship and hence, the suit by certain share holders of the company, having no identical interest, depending upon different facts; therefore, Order-1, rule 8 of The Civil Procedure Code has no application and refused to consider the suit as a representative suit."

9. In view of the aforesaid discussion, this Court is of the opinion that no case is made out for the interference by this Court either under Article 226 or 227 of the Constitution of India. The petition fails and the same is dismissed. Rule is discharged with no order as to costs.

10. At this stage, learned advocate for the petitioner requests to continue the interim relief. The fact that this Court has not found any substance in the petition, the interim relief cannot be continued. Hence, the request is

rejected.

(RAVI R.TRIPATHI, J.)

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